

FILE

DECISION – WALPOLE ZONING BOARD OF APPEALS CASE NO. 13-17

APPLICANT
Chandler Sullivan

LOCATION OF PROPERTY INVOLVED
505 Washington Street
Walpole Assessors Map 27, Parcel 287

APPLICATION

A Special Permit under Section 6-C.8.D of the Zoning Bylaw to allow the construction of an 8 foot fence when a 6 foot fence is allowed, at 505 Washington Street, Walpole, MA 02081.

On June 21, 2017 a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to granting of the Special Permit requested. The members who were present and voting:

Matthew Zuker, Chairman
Craig Hiltz, Clerk
Susanne Murphy, Member
Robert Fitzgerald, Associate Member

VOTE OF THE BOARD

A motion was made by Mr. Hiltz and seconded by Mr. Fitzgerald to grant the Special Permit under Section 6-C.8.D of the Zoning Bylaw to allow the construction of an 8 foot fence at 505 Washington Street, Walpole, MA 02081.

The vote was 4-0-0 in favor (Zuker, Hiltz, Murphy, Fitzgerald voting); therefore, the Special Permit under Section 6-C.8.D is hereby granted subject to the following conditions:

1. The fence shall be constructed as shown on the plan submitted at the public hearing on June 21, 2017.
2. There shall be no other relief granted.
3. The Applicant must conform with all other zoning requirements relative to fences.

REASONS FOR DECISION

It is the finding of the Board that the Applicant was able to meet the requirements of Section 6-C.8.D to allow the requested 8' fence in the Residence B District. The Board finds that the fence is in character with and follows the intent of the Residence B District. Accordingly, the Board has determined that the Special Permit requested is warranted.

FURTHER FINDINGS

Section 2: Administration, 2. Special Permits, B. Finding and Determination required that:

(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

(a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;

The Board finds that besides the 100' section of the proposed 8' fence, the rest of the fence which will not be constructed all the way to the street complies with the 3' height restriction between the street and the setback of 6' elsewhere of Section 6-C.8.D as set forth below. Accordingly, the Board finds this condition satisfied.

(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The Board finds that as conditioned above there are no changes to the existing parking or driveway, as the 8' section of the fence will be back towards the rear of the property and will not interfere with the driveway sight lines of the property or neighbor when exiting their property. As such, this criterion is satisfied.

(c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;

The Board finds that the proposed 8' fence should not be an adverse effect to the neighborhood. The proposed undertaking is specifically intended to allow the Applicant and her family to remain in their home with heightened privacy from the neighboring group home. The fence is not designed to increase the number of residents. Accordingly, the Board finds that there will not be any adverse effect on the neighborhood and this condition is satisfied.

(d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;

The Board finds that as shown on the plans submitted with the Application, the proposed 8' fence conforms to the dimensional requirements of the Zoning Bylaw. The proposed fence will replace in the same location an existing deteriorated fence which runs along the property line. Therefore, the Board is satisfied that this condition is met.

(e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

The Board finds that the proposed fence is residential in nature and there is nothing being used to cause any danger to the immediate neighborhood of the premises through fire, explosion, emissions of waste or other causes and this condition is satisfied.

(f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

The Board finds that the proposed use is residential in nature. There is nothing being used, generated or otherwise that would create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood. Therefore, this condition is satisfied.

(g) shall not adversely affect the character of the immediate neighborhood; and

The Board finds that the immediate neighborhood is residential in nature and the proposed undertaking is consistent with the area and immediate neighborhood. The plans show the fence is being renovated and elevated in a tasteful manner that is consistent with the size and construction of the other fences in the neighborhood and will provide privacy that's appropriate for such uses. As such, the proposed fence will not have an adverse effect to the character of the immediate neighborhood. Thus, this condition is satisfied.

(h) shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Board finds that the purpose of the Zoning Bylaw in part states, "to encourage housing for persons of all income levels..." "to encourage the most appropriate use of the land". The property has a downward slope which requires the construction of the 8' fence to provide adequate privacy from the adjacent home at a higher elevation. As such, this use, conditioned appropriately, is entirely compatible with the purpose of the Zoning Bylaw and this condition is satisfied.

Additionally, the necessary Findings and Determinations noted in Section 6-C.8.D of the Zoning Bylaw have been satisfied and addressed through this Decision and the conditions.

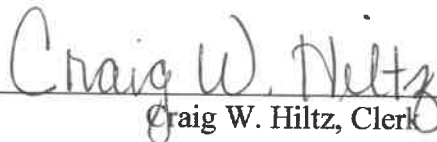
Said Special Permit is granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if

construction has not begun by such date except for good cause.”

Massachusetts General Laws c. 40A, §11 provides in pertinent part as follows: “A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant.”

APPEALS FROM THIS DECISION FOR A SPECIAL PERMIT, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Craig W. Hiltz, Clerk

am

cc: Town Clerk Engineering Planning Board
 Applicant
 Board of Selectmen Building Inspector Conservation Commission
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This decision was made on June 21, 2017 and filed with the Town Clerk on June 29, 2017.